IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1004 OF 2006

Krishnat Khandu Jadhav & Ors. ...Petitioners
Vs.
Sandeep Shamrao Patil & Ors. ...Respondents

Mr P.D. Dalvi for the Petitioners.
Mr Amit Borkar for the Respondents.

CORAM : S. B. MHASE, J.
DATE : MARCH 23, 2006.

P.C.:

1. Heard counsel for both the sides. Rule returnable forthwith. The order dated 13.10.2005 passed by the IIIrd Joint Civil Judge, Junior Division, Kolhapur below Exh.17 from Regular Civil Suit NO.1053 of 2004 is under challenge by the original defendants. By this Petition the Respondents-original defendants have requested the court to set aside the no written statement order and accept the written statement. The said application for setting aside 'no written statement' order and accepting the written statement is rejected by the Trial Court. According to the Petitioner, the Petitioner could not file the written statement because he was ill and secondly that the information about the mortgage deed since the said document being very old was not available.

2. Admittedly, the suit filed by the Respondents is for redemption of mortgage. Therefore, as per the rules of pleadings it is obligatory for the Respondent to produce the said document alongwith the plaint since the claim of the plaintiff is based on such a document. However, it appears that neither the document nor the certified copy of the said document were produced on record and the suit was filed and therefore, the court observed that if the copies were not available the notice under Order 7 Rule 14 of the Code of Civil Procedure should have been given. No doubt such a document is registered document, but the court should have taken into consideration the difficulty that even if the applications for certified copies are made, the certified copies of such a document are not immediately available. Even though there is no certificate produced on record that the Petitioner was ill, still there was affidavit on record to the effect that the Petitioner was ill and there is nothing on record to disbelieve the said affidavit. In such matters the courts are not expected to be hyper-technical. The whole approach of the Trial Court shall be to allow the parties to contest the matter on merits. Otherwise, if the

matter is decided ex-parte without allowing all parties to participate on merit, in most of the cases the matters are remanded by the Appellate Court and unnecessarily it leads to protraction of the trials. Therefore, unless and until the court is satisfied that a person like Petitioner is wholly reckless and/ or not diligent in availing the remedy, the court should have an approach that opportunity should be granted. This Court in a decision reported in 2004 (2) MLJ 419 in case of Shailaja A. Sawant (DR.) Vs. Sayajirao Ganpatrao Patil has already taken similar view and therefore, the Writ Petition is allowed, however, on costs.

3. Hence, I pass the following order:

(i) The order passed on 13.10.2005 on an Application below Exh.17 from Regular Civil Suit No.1053 of 2004 is hereby set aside.

(ii) Written Statement filed by the Petitioner be accepted, however, subject to the costs of payment of Rs.1,500/- to be deposited as the condition precedent in the Trial Court within period of two weeks.

(iii) Rule made absolute accordingly.

JUDGE